

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

ROBERT R. FRY,

Plaintiff-Appellant,

v

CHERRIE GODOSHIAN and ARTHUR  
GODOSHIAN,

Defendants-Appellees.

---

UNPUBLISHED  
February 23, 2006

No. 257644  
Monroe Circuit Court  
LC No. 03-017045-NO

Before: Borrello, P.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting summary disposition to defendants after holding that the rescue doctrine did not apply to this case. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On September 23, 2001, defendants were having a garage sale at their home in Monroe County. Defendant Cherrie Godoshian has legal custody of a child who was three years old at the time of the garage sale. The child was hyperactive and lacked the communication skills to follow verbal directions. On the day of the garage sale, he had been verbally reprimanded several times to stay away from the gate that led out toward the road. He was also given a timeout because he had gone too close to the open gate and toward the road.

Shortly after that timeout, the child was running in the yard toward the open gate and the road. According to plaintiff, he chased the child because he believed the child was in imminent danger from the road traffic. During the chase, plaintiff fell and injured his shoulder. Plaintiff brought this case against defendants claiming that their negligent supervision of the child created a dangerous situation that invited his rescue, which then caused his injury. Defendant Cherrie Godoshian testified at her deposition that, at the time of plaintiff's injury, the child was playing a game with plaintiff by zigzagging in all directions in the yard as plaintiff chased him.

The trial court determined that the rescue doctrine did not apply to this case because defendants provided adequate supervision for the child and therefore were not negligent.

A trial court's grant of summary disposition based on MCR 2.116(C)(10) is reviewed de novo. *Rose v Nat'l Auction Group*, 466 Mich 453, 461; 646 NW2d 455 (2002). When reviewing such a decision, affidavits, pleadings, depositions, admissions, and other documentary

evidence are viewed in a light most favorable to the party opposing the motion. *Id.* Summary disposition is appropriate if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law. *Id.* The court may not make factual determinations or weigh credibility when deciding a motion for summary disposition. *In re Handelsman*, 266 Mich App 433, 437; 702 NW2d 641 (2005).

The rescue doctrine provides that a “tortfeasor whose negligence endangers the victim owes the victim’s rescuer a duty of reasonable care.” *Solomon v Shuell*, 435 Mich 104, 135; 457 NW2d 669 (1990). When the rescue doctrine applies, it establishes “a causal nexus linking the tortfeasor’s negligent conduct to the rescuer’s injuries.” *Id.*

Negligence is shown when a plaintiff proves “(1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached that duty; (3) that the defendant’s breach of duty was a proximate cause of the plaintiff’s damages; and (4) that the plaintiff suffered damages.” *Krass v Tri-County Security, Inc.*, 233 Mich App 661, 667-668; 593 NW2d 578 (1999). Once a duty is established, the reasonableness of defendant’s conduct is generally a question of fact for a jury to decide. *Arias v Talon Dev Group, Inc.*, 239 Mich App 265, 268; 608 NW2d 484 (2000). Summary disposition may be appropriate, however, “when the moving party can show either that an essential element of the nonmoving party’s case is missing, or that the nonmoving party’s evidence is insufficient to establish an element of its claim . . . .” *Latham v Nat’l Car Rental Systems, Inc.*, 239 Mich App 330, 340; 608 NW2d 66 (2000).

In this case, defendants clearly had a duty to the child over whom they had custody. The issue at hand is whether they breached their duty to the child. If such a breach occurred, then the rescue doctrine could apply to these facts and thereby link defendants’ conduct regarding supervision of the child to plaintiff’s injuries. The facts and circumstances in this case include a hyperactive child who did not respond to verbal direction and had displayed a propensity to wander and to run out toward the road. The child had been disciplined several times with verbal commands to stay away from the gate, and he also received a time out because of an attempt to go outside of the fenced-in yard.

Based on the special needs and previously exhibited behaviors of this child, the evidence is sufficient, when taken in a light most favorable to plaintiff, to create a material question of fact concerning whether defendants breached their duty to the child and did enough to keep this child protected from the dangers of the busy road. The reasonableness of defendants’ behavior in supervising the child is a question of fact to be determined by a jury. Moreover, there is a factual question as to whether plaintiff was injured while trying to rescue the child or while he was merely playing with the child. Accordingly, it will be the jury’s determination whether defendants were negligent in their supervision of the child and whether plaintiff was attempting to rescue the child that will determine whether the rescue doctrine is applicable to the circumstances of this case.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Stephen L. Borrello  
/s/ David H. Sawyer  
/s/ E. Thomas Fitzgerald